

No transactions are exempt on the basis of the pollution control exemption unless certifications are obtained as described in 86 Ill. Adm. Code 130.335(a) of the Department's rules. (This is a GIL).

December 30, 1999

Dear Xxxxx:

This letter is in response to your letter dated November 8, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We respectfully request a General Information Letter pursuant to 2 Ill. Admin. Code Section 1200.120 regarding the taxability of the vacuum trucks used by our clients (see Exhibit 1 for a picture of a vacuum truck). In the paragraphs below we completely discuss the specific facts and legal authorities. There are no audits or litigation cases pending with respect to this request. To the best of the knowledge of both our clients and our office the Department has not previously ruled on the same or a similar issue for our clients or predecessors. Neither our clients nor our office previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued. Please delete Exhibit 1 from the publicly disseminated version of the General Information Letter. We thank you in advance for your prompt attention to this matter.

Facts

The vacuum truck (also called a guzzler or a supersucker) is a completely self-contained mobile vacuum unit consisting of a diesel power source, positive displacement type vacuum pump, hydraulic and pneumatic control systems, multiple air filtration systems, and a dump-type hydraulically sealed payload collection tank (see Exhibit 1). The vacuum truck is designed to pneumatically pick up and convey material in either solid, liquid or slurry form. Our clients' vacuum trucks use a fail-safe filter system that provides positive protection to the environment.

While operating with either solids or liquids, material is picked up at the end of the suction line and pneumatically conveyed into the body. As the conveyed material enters the collector body, the majority falls to the bottom due to gravity and the tremendous reduction in air velocity. Any material still airborne will continue

with the air flow to a duct in which the air is equally divided into centrifugal separators. Material is separated out using the centrifugal principle by being spun around the outside. That material falls out to the bottom and the air leaves through the top. The air then travels to a baghouse. The air hits a deflector shield and is forced to the bottom of the baghouse. From there the air travels through filter bags that catch any particles still in the air. The clean air travels through a duct and into a final screen. From there it goes through the vacuum pump and is exhausted to the atmosphere through the discharge silencer.

The vacuum apparatus is bolted and welded onto the chassis and cab by the manufacturer and cannot be separated or disassembled by our clients. The vacuum apparatus is powered solely by the engine and the transmission of the cab and chassis. Therefore, the system is totally reliant on the sum total of the components and not any portion or subportion of the total system. The transmission connects to a transfer case. Before the split-shaft transfer case is engaged, the engine power is transferred through the transmission to the rear axle. After the transfer case is engaged, engine power is transferred through the transmission to the transfer case. Now, engine power is available to operate the vacuum pump, and engine power is no longer available to drive the vacuum truck (i.e., our clients cannot vacuum and drive the vacuum trucks at the same time).

Our clients' vacuum trucks are used for recovering harmful releases such as oil spills and chemical spills (to water or the atmosphere). The vacuum trucks also are used for abating pollution in vessels, tanks, pits, ponds and waste water treatment facilities. The materials that the vacuum trucks reclaim are from environmental spills, oil recovery and catch basins including but limited to acids, light oils, diesel fuels, gasoline, lime sludge and fly ash. The use of our clients' vacuum trucks results in the reduction of both air and water pollution.

Legal Authorities

A. Statute and Regulations

Illinois law exempts 'pollution control facilities' from Use Tax. 35 ILCS 120/2a; 86 Ill. Admin. Code Section 130.335. 'Pollution control facilities' means any system, method, device or appliance appurtenant thereto used for the primary purpose of: (1) eliminating, preventing or reducing air and water pollution, or (2) treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life or to property. Id. (emphasis added). The broad scope of the statute and regulations appear to encompass and exempt our clients' vacuum trucks.

B. Case Law

In Beelman Truck Company v. Sweet, Illinois Appellate Court (5th District) (1993), the court exempted plastic liners and escort trucks used by a trucking company that transported hazardous waste in dump trucks. The court broadly interpreted the pollution control facilities exemption. Even though there are differences in the facts in Beelman (transportation company using plastic liners and escort trucks) and this General Information Letter request (industrial cleaning company using vacuum trucks), the court's broad interpretation of the pollution control facilities statute supports application of the exemption to the vacuum trucks at issue in this request. Simply put, if escort trucks are entitled to the exemption, then our clients' vacuum trucks also appear to be so entitled.

C. Letter Rulings

Prior letter rulings have exempted vacuum trucks used to clean up spills or perform other pollution abatement tasks. See 96-0176, 95-0492, 93-0477; cf 97-0021 (partially disallowed - however, please note that the 'truck' (i.e., chassis, cab) at issue in this request is part of an integrated and physically connected unit and also is the power source for vacuuming).¹

A long line of letter rulings also has exempted sweepers used to clean or prevent dust or other emissions. See 96-0078, 92-0203, 90-0456, 87-0884, 83-500, 83-0586. Our clients' vacuum trucks are analogous to sweepers (albeit much more efficient than sweepers) and therefore appear to qualify for exemption like the sweepers.

The Department also has ruled that water trucks (i.e., trucks that simply spray water on the road) used to prevent coal dust emission from roads qualified for the pollution control facilities exemption. See 83-0580. Our clients' vacuum trucks do significantly more to prevent/reduce pollution than water trucks and therefore appear to be exempt like water trucks.

Request for Ruling

Based on the facts and legal authorities contained in this request, we respectfully ask that the Department issue a General Information Letter exempting the vacuum trucks used by our clients.

Thank you again for your prompt attention to this matter. Please call the undersigned at #### if you have any questions or need any additional information. Also, please call the undersigned prior to issuing a letter that does not 100% exempt the vacuum trucks at issue in this request.

We are unable to give a specific ruling in the context of a general information letter. For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.335 concerning Pollution Control Facilities. The pollution control facilities exemption extends to "any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term "pollution" is defined in the Environmental Protection Act (415 ILCS 5/1 et seq.), or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property."

No items qualify for the Pollution Control Facilities exemption in and of themselves. No transactions are exempt on the basis of the pollution control exemption unless certifications are obtained as described in 86 Ill. Adm. Code 130.335(a) of the Department's rules. Items that can be used in both qualifying and non-qualifying activities must be used primarily in qualifying activities before the exemption has application.

Generally vacuum tanks and vacuum trucks do not qualify for the pollution control facilities exemption from sales tax if their primary purpose is to obtain an economic benefit. If, however, the vacuum tank or vacuum truck is used for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property, it may qualify for the exemption.

You state in your letter that "[t]he vacuum apparatus is powered solely by the engine and the transmission of the cab and chassis. Therefore, the system is totally reliant on the sum total of the components and not any portion or subportion of the total system. The transmission connects to a transfer case. Before the split-shaft transfer case is engaged, the engine power is transferred through the transmission to the rear axle. After the transfer case is engaged, engine power is transferred through the transmission to the transfer case. Now, engine power is available to operate the vacuum pump, and engine power is no longer available to drive the vacuum truck (i.e., our clients cannot vacuum and drive the vacuum trucks at the same time)."

From the information contained in your letter, it appears that the truck is one integrated system that cannot be separated. Further, it appears from your letter that the primary purpose of the vacuum truck you describe is to recover harmful releases and abate pollution in vessels, tanks, pits, ponds, and waste water treatment facilities. In that case, as stated above, the vacuum truck would qualify for the exemption.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further

questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.

¹ It is our understanding that prior models of vacuum trucks had 'pony' motors that attached (and easily unattached) to the cab and chassis and acted as the power unit for vacuuming. The vacuum trucks at issue in this request are stronger, more advanced and more connected than such prior models.